

February 5, 2013

ICE HOUSE PARTNERS, INC.
Request for Certification for RPS Eligibility

ORDER GRANTING NEW
RENEWABLE RESOURCE
CERTIFICATION

WELCH, Chairman; LITTELL and VANNOY, Commissioners

I. SUMMARY

The Ice House Partners, Inc. ("Ice House") 280 kW Hydroelectric Project located in Ayer, Massachusetts is certified as a Class I new renewable resource that is eligible to satisfy Maine's new renewable resource portfolio requirement pursuant to Chapter 311, § 3(B)(3)(c) of the Commission's rules.

II. BACKGROUND

A. New Renewable Resource Portfolio Requirement

During its 2007 session, the Legislature enacted an Act To Stimulate Demand for Renewable Energy (Act). P.L. 2007, ch. 403 (codified at 35-A M.R.S.A. § 3210(3-A)). The Act added a mandate that specified percentages of electricity that supply Maine's consumers come from "new" renewable resources.¹ Generally, new renewable resources are renewable facilities that have an in-service date, resumed operation or were refurbished after September 1, 2005. The percentage requirement starts at one percent in 2008 and increases in annual one percent increments to ten percent in 2017, unless the Commission suspends the requirement pursuant to the provisions of the Act.

As required by the Act, the Commission modified its portfolio requirement rule (Chapter 311) to implement the "new" renewable resource requirement. *Order Adopting Rule and Statement of Factual and Policy Basis*, Docket No. 2007-391 (Oct. 22, 2007). The implementing rules designated the "new" renewable resource

¹ Maine's electric restructuring law, which became effective in March 2000, contained a portfolio requirement that mandated that at least 30% of the electricity to supply retail customers in the State come from eligible resources, which are either renewable or efficient resources. 35-A M.R.S.A. § 3210(3). The Act did not modify this 30% requirement.

requirement as “Class I”² and incorporated the resource type, capacity limit and the vintage requirements as specified in the Act. The rules thus state that a new renewable resource used to satisfy the Class I portfolio requirement must be of the following types:

- fuel cells;
- tidal power;
- solar arrays and installations;
- wind power installations;
- geothermal installations;
- hydroelectric generators that meet all state and federal fish passage requirement; or
- biomass generators, including generators fueled by landfill gas.

In addition, except for wind power installations, the generating resource must not have a nameplate capacity that exceeds 100 MW. Finally, the resource must satisfy one of four vintage requirements. These are:

- 1) renewable capacity with an in-service date after September 1, 2005;
- 2) renewable capacity that has been added to an existing facility after September 1, 2005;
- 3) renewable capacity that has not operated for two years or was not recognized as a capacity resource by the ISO-NE or the NMISA and has resumed operation or has been recognized by the ISO-NE or NMISA after September 1, 2005; or
- 4) renewable capacity that has been refurbished after September 1, 2005 and is operating beyond its useful life or employing an alternate technology that significantly increases the efficiency of the generation process.

The implementing rules (Chapter 311, § 3(B)(4)) establish a certification process that requires generators to pre-certify facilities as a new renewable resource under the requirements of the rule and provides for a Commission determination of resource eligibility on a case-by-case basis.³ The rule contains the information that must be included in a petition for certification and specifies that the Commission shall provide an opportunity for public comment if a petitioner seeks certification under

² The “new” renewable resource requirement was designated as Class I because the requirement is similar to portfolio requirements in other New England states that are referred to as “Class I.” Maine’s pre-existing “eligible” resource portfolio requirement is designated as Class II.

³ In the *Order Adopting Rule* at 6, the Commission noted that a request for certification can be made at any time so that a ruling can be obtained before a capital investment is made in a generation facility.

vintage categories 2, 3 and 4. Finally, the rule specifies that the Commission may revoke a certification if there is a material change in circumstance that renders the generation facility ineligible as a new renewable resource.

B. Petition for Certification

On December 13, 2012, Ice House Partners, Inc. ("Ice House") filed a petition to certify its 280 kW Ice House Partners Project ("Facility") located in Ayer, Massachusetts as a Class I New Renewable Resource under the resumed operations provision of the Commission's renewable portfolio rules. Ch. 311, § 3(B)(3)(c). The petition states the Facility ceased operations in the 1940s and the powerhouse was destroyed by fire in the 1970s. The petition states the Facility resumed operations in March 2012 and that the Facility meets all state and federal fish passage requirements. Ice House provided numerous documents in support of its Petition, including the 2008 Order from the Federal Energy Regulatory Commission Granting Exemption from Licensing (FERC Order), a 2009 Certification from the Low Impact Hydropower Institute (LIHI), and an approval of the Facility as a Class I Renewable Generation Unit by the Massachusetts Department of Energy Resources.

An opportunity for comment was issued on December 17, 2012, and no comments were received.

III. DECISION

The Commission has delegated to the Director of the Electric and Gas Division the authority to certify generation facilities as Class I new renewable resources pursuant to Chapter 311, § 3(B) of the Commission rules. *Delegation Order*, Docket No. 2008-184 (April 23, 2008). Based on the information provided by Ice House, I conclude that the Facility satisfies the resource type, capacity limit and vintage requirements of the rule. The total Ice House generating station capacity does not exceed 100 MW and the Facility satisfies the restart vintage category set forth in Chapter 311, § 3(B)(3)(c) because it ceased operations for at least two consecutive years prior to September 1, 2005 and subsequently resumed commercial operations after September 1, 2005.

Further, the Facility is a hydroelectric generator that meets all state and federal fish passage requirements. It is apparent from the supplied documentation that upstream and downstream fish passage other than eel passage is not required at this time. Ice House has demonstrated that it has complied with the upstream and downstream eel passage requirements contained in the FERC Order by installing eel passage at the Facility prior to the commencement of operations.

Accordingly, the Facility is hereby certified as a Class I New Renewable Resource eligible to satisfy Maine's New Renewable Resource portfolio requirement pursuant to Chapter 311, § 3(B)(3)(c) of the Commission rules.

Ice House, or the Facility's successive owner, shall provide timely notice to the Commission of any material change in the character or operation of the Facility, including the status of and compliance with fish passage requirements or certification by LIHI, from that described in the Petition filed in this proceeding.

BY ORDER OF THE DIRECTOR OF THE ELECTRIC AND GAS
UTILITY INDUSTRIES

A handwritten signature in cursive script that reads "Faith Huntington".

Faith Huntington

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within 20 days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.